Motor Insurers' Bureau of Singapore v Pacific & Orient Insurance Co Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02(IM)-1982–11 OF 2023
SUPANG LIAN, WONG KIAN KHEONG AND AZHAHARI RAMLI JJCA
23 JUNE 2025

Civil Procedure — Reciprocal enforcement of judgments — Setting aside registration of foreign judgment — Whether High Court erred in setting aside registration of Singapore judgment on ground enforcement of judgment would be contrary to public policy in Malaysia — Reciprocal Enforcement of Judgments Act 1958 s 5(1)(a)(v) — Whether phrase 'contrary to public policy' in s 5(1)(a)(v) of the Reciprocal Enforcement of Judgments ('the REJA') had to be construed narrowly and restrictively so that REJA's raison d'etre of international comity and reciprocity between nations was not rendered illusory

The High Court in Singapore had awarded a Malaysian citizen ('Subramaniam') S$985,000 ('the award') in general damages, special damages, costs and disbursements for injuries and other losses he suffered arising from a road accident in Singapore. The award was made against the rider of a motorcycle — insured by the respondent — on which Subramaniam was riding pillion at the time. Based on an agreement between the appellant and the respondent to meet the claims of injured road accident victims, the Singapore High Court allowed the appellant to claim payment of the award from the respondent ('the Singapore judgment'). The High Court in Malaysia allowed the Singapore judgment to be registered in Malaysia pursuant to s 4(1) of the Reciprocal Enforcement of Judgments Act 1958 ('the REJA'). The respondent applied under s 5(1)(a)(v) of the REJA to set aside the registration on the ground that enforcement of the Singapore judgment would be contrary to public policy in Malaysia. In allowing the setting aside, the High Court held, inter alia, that allowing the Singapore judgment to be enforced in Malaysia would: (a) indirectly impose in Malaysia (where it was not mandatory) Singapore law on compulsory insurance coverage for passengers in motor vehicles; (b) remove the freedom of choice that motor vehicle owners and users in Malaysia had with regard to passenger-liability insurance; (c) result in increased motor insurance premiums in Malaysia to cover for such added risks; and (d) cause Malaysian motor insurers to reconsider insuring Malaysian-registered vehicles that travelled to Singapore. In the instant appeal, the appellant argued that the High Court had considered irrelevant factors in deciding to set aside the registration of the Singapore judgment.

Held, unanimously allowing the appeal, setting aside the High Court's decision and restoring the registration of the Singapore judgment:

(1) The respondent had failed to discharge its legal/evidential burden under s 5(1)(a)(v) of the REJA to prove that the registration of the Singapore judgment was contrary to public policy in Malaysia (see paras 39 & 58).

(2) The Singapore judgment was purely a monetary judgment based on the respondent's contractual liability to the appellant under the 'special agreement' and 'Singapore domestic agreement' and concerned the judgment for damages that Subramaniam had obtained against the rider of the motorcycle insured by the respondent which did not provide insurance coverage for pillion riders, including Subramaniam (see para 40).

(3) The Court of Appeal in *Mann Holdings Pte Ltd & Anor v Ung Yoke Hong* [2019] MLJU 101 ('Mann Holdings') decided that courts must take a narrow and restrictive approach to the application of public policy under s 5(1)(a)(v) of the REJA so that the twin bases of REJA, namely, international comity and reciprocity between nations was not undermined or rendered nugatory. The restrictive approach to be adopted was to be narrower than the scope of operation of public policy with regards to contracts and arbitral awards under Malaysian domestic law. The High Court was bound by stare decisis to follow *Mann Holdings* but it did not do so. The High Court also erred in failing to find that the respondent had not discharged its legal/evidential burden of proof under s 5(1)(a)(v) of the REJA and in failing to consider that the Road Transport Act 1987 ('the RTA') was a piece of social legislation that had to be interpreted in a socially-benevolent manner (see paras 39, 41–43 & 47).

(4) Nothing in the RTA expressly or impliedly prohibited the enforcement of the Singapore judgment. A socially-benevolent interpretation of the RTA in favour of victims of road accidents who had no recourse of recovery against negligent owners/users of motor vehicles as well as their insurers did not support the respondent's contention that the enforcement of the Singapore judgment was contrary to public policy in Malaysia. On the contrary, it supported the enforcement of the Singapore judgment under REJA especially as the appellant was a non-profit organisation that ensured that, amongst others, victims of road accidents had recourse when there was no insurance coverage for them (similar to the objectives and functions of the Motor Insurers' Bureau of West Malaysia as provided in the definition in s 89 of the RTA) (see paras 45 & 47).

(5) Neither the respondent's submissions, nor the High Court's grounds, for the setting aside of the registration of the Singapore judgment amounted

to specific aspects of public policy under s 5(1)(a)(v) of the REJA to justify the setting aside. To accede to the views expressed by the respondent and in the High Court's decision was to go contrary to the restrictive approach to public policy adopted in *Mann Holdings* and to render illusory the two bases of REJA, namely, international comity and reciprocity between nations (see paras 49–57).

[Bahasa Malaysia summary

Mahkamah Tinggi di Singapura telah memberikan award kepada seorang warganegara Malaysia ('Subramaniam') sejumlah S$985,000 ('award tersebut') bagi ganti rugi am, ganti rugi khas, kos dan perbelanjaan bagi kecederaan serta kerugian lain yang dialaminya berpunca daripada satu kemalangan jalan raya di Singapura. Award tersebut dibuat terhadap penunggang sebuah motosikal — yang diinsuranskan oleh responden — di mana Subramaniam menunggang sebagai pembonceng pada masa kejadian. Berdasarkan suatu perjanjian antara perayu dan responden untuk memenuhi tuntutan mangsa kemalangan jalan raya yang cedera, Mahkamah Tinggi Singapura membenarkan perayu menuntut pembayaran award tersebut daripada responden ('penghakiman Singapura'). Mahkamah Tinggi di Malaysia membenarkan penghakiman Singapura didaftarkan di Malaysia selaras dengan s 4(1) Akta Penguatkuasaan Penghakiman Bersaling 1958 ('APPB'). Responden telah memohon di bawah s 5(1)(a)(v) APPB untuk mengetepikan pendaftaran tersebut atas alasan bahawa penguatkuasaan penghakiman Singapura akan bercanggah dengan dasar awam di Malaysia. Dalam membenarkan pengetepian tersebut, Mahkamah Tinggi memutuskan, antara lain, dalam membenarkan penghakiman Singapura dikuatkuasakan di Malaysia akan: (a) secara tidak langsung mengenakan di Malaysia (di mana ia tidak mandatori) undang-undang Singapura mengenai perlindungan insurans mandatori untuk penumpang dalam kenderaan bermotor; (b) menafikan kebebasan memilih yang dimiliki pemilik serta pengguna kenderaan bermotor di Malaysia berhubung insurans liabiliti penumpang; (c) mengakibatkan kenaikan premium insurans motor di Malaysia untuk meliputi risiko tambahan tersebut; dan (d) menyebabkan penanggung insurans motor di Malaysia menimbang semula untuk menginsuranskan kenderaan berdaftar Malaysia yang memasuki Singapura. Dalam rayuan semasa, perayu berhujah bahawa Mahkamah Tinggi telah mempertimbangkan faktor-faktor yang tidak relevan dalam membuat keputusan untuk mengetepikan pendaftaran penghakiman Singapura.

Diputuskan, sebulat suara membenarkan rayuan, mengetepikan keputusan Mahkamah Tinggi dan mengembalikan pendaftaran penghakiman Singapura:

(1) Responden telah gagal melepaskan beban undang-undang/bukti di bawah s 5(1)(a)(v) APPB untuk membuktikan bahawa pendaftaran penghakiman Singapura adalah bercanggah dengan dasar awam di

Malaysia (lihat perenggan 39 & 58). A

(2) Penghakiman Singapura adalah semata-mata satu penghakiman wang berdasarkan liabiliti kontraktual responden kepada perayu di bawah 'Perjanjian Khas' dan 'Perjanjian Domestik Singapura' dan berhubung penghakiman ganti rugi yang diperoleh Subramaniam terhadap penunggang motosikal yang diinsuranskan oleh responden yang tidak menyediakan perlindungan insurans kepada pembonceng, termasuk Subramaniam (lihat perenggan 40). B

(3) Mahkamah Rayuan dalam *Mann Holdings Pte Ltd & Anor lwn Ung Yoke Hong* [2019] MLJU 101 ('Mann Holdings') telah memutuskan bahawa mahkamah mesti mengambil pendekatan yang sempit dan terhad terhadap pemakaian dasar awam di bawah s 5(1)(a)(v) REJA supaya dua asas REJA, iaitu, international comity dan timbal balik antara negara tidak digugat atau menjadi sia-sia. Pendekatan terhad yang perlu diguna pakai adalah lebih sempit daripada skop operasi dasar awam berhubung kontrak dan award timbang tara di bawah undang-undang domestik Malaysia. Mahkamah Tinggi terikat dengan prinsip stare decisis untuk mengikuti *Mann Holdings* tetapi gagal berbuat demikian. Mahkamah Tinggi juga telah tersilap kerana gagal mendapati bahawa responden tidak menunaikan beban undang-undang/bukti di bawah s 5(1)(a)(v) REJA dan gagal mempertimbangkan bahawa Akta Pengangkutan Jalan 1987 ('APJ') adalah suatu undang-undang sosial yang perlu ditafsirkan secara berkewajipan social (lihat perenggan 39, 41–43 & 47). C D E

(4) Tiada apa-apa dalam APJ secara nyata atau tersirat melarang penguatkuasaan penghakiman Singapura. Tafsiran berkewajipan sosial terhadap APJ memihak kepada mangsa kemalangan jalan raya yang tidak mempunyai saluran tuntutan terhadap pemilik/pengguna kenderaan bermotor yang cuai serta penanggung insurans mereka, tidak menyokong hujahan responden bahawa penguatkuasaan penghakiman Singapura bercanggah dengan dasar awam di Malaysia. Sebaliknya, ia menyokong penguatkuasaan penghakiman Singapura di bawah APPB khususnya kerana perayu adalah sebuah organisasi tidak berasaskan keuntungan yang memastikan bahawa, antara lain, mangsa kemalangan jalan raya mempunyai saluran tuntutan apabila tiada perlindungan insurans bagi mereka (sama dengan objektif dan fungsi Biro Insurans Motor Semenanjung Malaysia sebagaimana ditakrif dalam s 89 APJ) (lihat perenggan 45 & 47). F G H

(5) Hujahan responden mahupun alasan Mahkamah Tinggi bagi mengetepikan pendaftaran penghakiman Singapura tidak memadai sebagai aspek khusus dasar awam di bawah s 5(1)(a)(v) APPB untuk membenarkan pengetepian tersebut. Menerima pandangan yang dikemukakan oleh responden dan keputusan Mahkamah Tinggi adalah bertentangan dengan pendekatan terhad terhadap dasar awam yang I

digunapakai dalam *Mann Holdings* serta akan menjadikan ilusi dua asas APPB, iaitu, international comity dan timbal balik antara negara (lihat parenggan 49–57).]

Cases referred to

Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd [1995] 3 MLJ 189, SC (refd)

Banque Nasionale De Paris v Wuan Swee May & Anor [2000] 3 MLJ 587; [2000] 4 CLJ 387, HC (refd)

Dalip Bhagwan Singh v PP [1998] 1 MLJ 1, FC (refd)

Etiqa General Takaful Bhd v Thavamani a/p Krishnan & Ors [2022] MLJU 3733; [2022] CLJU 3384, HC (refd)

Hotel Ambassador (M) Sdn Bhd v Seapower (M) Sdn Bhd [1991] 1 MLJ 404, SC (refd)

Jambatan Merah Sdn Bhd v Public Bank Berhad [2015] MLJU 1208; [2016] 1 CLJ 811, HC (refd)

Jan De Nul (M) Sdn Bhd & Anor v Vincent Tan Chee Yioun & Anor [2019] 2 MLJ 413, FC (refd)

Liao Eng Kiat v Burswood Nominees Ltd [2004] SGCA 45, CA (folld)

Liberty Insurance Bhd v Marrison ak Sidai & Anor [2019] 12 MLJ 763; [2019] 8 CLJ 380, HC (refd)

Lim Phin Khian v Kho Su Ming [1996] 1 MLJ 1, FC (refd)

Mann Holdings Pte Ltd & Anor v Ung Yoke Hong [2019] MLJU 101, CA (folld)

Mohamed Fayadh bin Abdul Gaffor & Ors v Liberty Insurance Bhd (formerly known as Uni Asia General Insurance Bhd) [2024] 6 MLJ 519, CA (folld)

Motor Insurers' Bureau of Singapore and another v Am General Insurance Bhd (Formerly Known As Kurnia Insurans (Malaysia) Bhd) (Liew Voon Fah, Third Party) [2018] 4 SLR 882, HC (refd)

Motor Insurers' Bureau of Singapore v AM General Insurance Bhd [2020] 3 CLJ 581, HC (refd)

Pacific & Orient Insurance Co Bhd (formerly known as Pacific & Orient Insurance Co Sdn Bhd) v Motor Insurers' Bureau of Singapore [2013] 1 SLR 341, HC (refd)

PT Sandipala Arthaputra v Muehlbauer Technologies Sdn Bhd [2021] MLJU 1063, HC (refd)

Puran Singh v Kehar Singh; Bhadur Singh [1939] 1 MLJ 71 (refd)

Sabah Development Bank Bhd v TYL Land & Development Sdn Bhd [2024] 6 MLJ 433, CA (folld)

Salvage Engineers Ltd, Re [1962] 1 MLJ 438 (refd)

Tetuan Wan Shahrizal, Hari & Co v PP [2023] 4 MLJ 1, FC (folld)

Legislation referred to

Arbitration Act 2005 s 37(1)(b)(ii)
Contracts Act 1950 s 24(e)
Financial Services Act 2013 s 84(1)

Motor Vehicles (Third-Party Risks and Compensation) Act 1960 [SG] s 5(1)
Reciprocal Enforcement of Commonwealth Judgments Act [SG] s 3(2)(f)
Reciprocal Enforcement of Judgments Act 1958 ss 2, 3(2), 4(1), 5, 5(1), (1)(a)(i), (1)(a)(ii), (1)(a)(iii), (1)(a)(iv), (1)(a)(v), (1)(a)(vi), (1)(b), First Schedule
Road Transport Act 1987 ss 89, 90, 90(1), 91, 91(1)(b), (1)(b)(aa), (1)(b)(bb), (1)(b)(cc)

Appeal from: *Motor Insurers' Bureau of Singapore v Pacific & Orient Insurance Co Bhd* [2024] 9 MLJ 691 (High Court, Kuala Lumpur)

Chong Yee Leong (with Kwong Chiew Ee, Melvin Ng Yet Ting and Cassandra Oh Wan Yee) (Rahmat Lim & Partners) for the appellant.
Dhinesh Bhaskaran (with Wong Jia Jing) (Shearn Delamore & Co) for the respondent.

Wong Kian Kheong JCA (delivering judgment of the court):

A. INTRODUCTION

[1] This appeal concerns the court's power under s 5(1)(a)(v) of the Reciprocal Enforcement of Judgments Act 1958 ('the REJA') to set aside the registration of a judgment of the Singapore High Court on the ground that the enforcement of the judgment would be contrary to public policy in Malaysia.

B. BACKGROUND

B(1). The Motor Insurers' Bureaus in West Malaysia and Singapore

[2] The appellant ('appellant') is a non-profit organisation in Singapore which operates a scheme funded by all general insurance companies and Lloyd's Underwriters transacting compulsory motor vehicle insurance business in Singapore. The appellant's primary function is to ensure that victims of road traffic accidents have recourse when:

(1) the driver of a motor vehicle who injures a victim cannot be traced; or

(2) the driver of a motor vehicle who injures a victim is without effective insurance to cover his/her liability and is therefore unable to compensate the victim.

[3] The appellant carries on the same function as 'Motor Insurance Bureau of West Malaysia' in West Malaysia ('MIBWM'). MIBWM is likewise a non-profit organisation funded by all general insurance companies in West Malaysia and insurance companies transacting compulsory motor vehicle insurance business in West Malaysia.

[4] To give effect to its functions and framework, the appellant and MIBWM, in Singapore and West Malaysia respectively, had each entered into similar arrangements governing compensation of third-party victims of road accidents in their respective countries. These arrangements are known as the 'principal agreement' and 'domestic agreements':

Appellant's contractual framework in Singapore

Date	Document	Objective(s)
22 February 1975	Principal agreement	Setting out the conditions for the appellant's liability to compensate victims of road traffic accidents caused by 'uninsured' or 'untraced' drivers and the procedure by which applications for compensation are to be made.
	Memorandum of agreement ('Singapore domestic agreement')	Delegating portions of the appellant's obligations under the principal agreement to all insurance companies and Lloyd's Underwriters which were at the time providing coverage for compulsory motor vehicle insurance in Singapore.
24 September 1998	Supplemental agreement	Implementation of a scheme to secure compensation to third-party victims of road accidents without effective insurance.
13 August 2003	Further supplemental agreement	Effecting certain amendments to the supplemental agreement.
	Deed of assignment	The Singapore Minister of Finance assigned his rights, benefits, interests, privileges, powers, and duties in and under the principal and supplemental agreements to the Public Trustee of the Republic of Singapore.

MIBWM's Contractual Framework in West Malaysia

Date	Document	Objective(s)
1968	MIBWM's 1968 agreement	To compensate road accident victims in whose favour the judgment was given by any court in West Malaysia if the said judgment was not satisfied within 28 days from the date the person became entitled due to ineffective insurance policy or for whatever reason other than the inability of the insurer to make payment.
1992	MIBWM's 1968 agreement	Substituted the MIBWM's 1968 agreement and added more requirements for MIBWM to comply with.
	Malaysian domestic agreement	'Insurer Concerned' will satisfy such judgment if a judgment is obtained in West Malaysia against any person in respect of a liability required to be insured by the 'Compulsory Insurance Legislation'.

[5] To compel Singapore motor-insurance companies transacting motor insurance in West Malaysia to comply with local Malaysian laws, Singapore insurers entered into 'special agreements' with MIBWM. This arrangement also applies in Singapore between the appellant and the respondent insurance company ('respondent').

[6] Following the Singapore domestic agreement, Malaysian insurance companies transacting motor-insurance in Singapore executed contracts known as 'special agreements' with the appellant. One such special agreement is the special agreement dated 15 September 1975 between the appellant and respondent ('special agreement').

[7] According to cl 2 of the special agreement, the respondent agreed to be bound by the Singapore domestic agreement. Reproduced below is cl 2 of the special agreement:

> *The [Respondent] further covenants with the [Appellant] that it will comply with every obligation imposed upon the Members of the Bureau by the [Singapore Domestic Agreement] between the [Appellant] and the Members (a copy whereof is annexed hereto) in every way as if the [Respondent] were an 'insurer' for the purpose of the said [Singapore Domestic Agreement] and in particular undertakes and binds itself to the [Appellant] to make any payment demanded under Clauses 6 and 7 of the said [Singapore Domestic Agreement]* and to furnish the Council of the [Appellant] such particulars or its premium income as the Council may require. (Emphasis added.)

[8] Clause 1 of the Singapore domestic agreement has defined 'Compulsory Insurance Legislation' as follows:

> *'Compulsory Insurance Legislation' means the Motor Vehicles (Third-Party Risks and Compensation) Act (Chapter 88) and any statutory modifications thereto* or any re-enactments thereof. (Emphasis added.)

[9] According to cl 3 of Singapore domestic agreement:

> *If a Judgment is obtained in Singapore against any person … in respect of liability required to be insured by the Compulsory Insurance Legislation the Insurer Concerned [Respondent] will satisfy the Original Judgment Creditor if and to the extent that the Judgment has not been satisfied by the Judgment Debtor within twenty-eight days from the date upon which the person in whose favor it was given is entitled to enforce it.* (Emphasis added.)

[10] At the time when the respondent executed the special agreement, the law applicable for third-party compensation in Singapore was Chapter 88. Chapter 88 then did not expressly require any person using motor vehicle in Singapore to ensure that his insurance policy covers liability in respect of passengers.

[11] On 30 March 1987, s 5(1) of Chapter 88 was amended through the Singapore Motor Vehicles (Third-Party Risks and Compensation) Act 1960. With the amendment, any person using motor vehicle in Singapore is required to ensure that his insurance policy covers liability in respect of passengers.

[12] The policy position taken by the General Insurance Association of Malaysia ('PIAM') in its Members' Circular No 46 of 1994 ('PIAM's 1994 Circular') is that all Malaysian insurers (including the respondent) continue to be bound by their contractual obligations to abide by Singapore laws, under the special agreement and the Singapore domestic agreement. According to para 5 of PIAM's 1994 Circular:

> 5. *It is to be noted that the liability of the Malaysian insurer is not pursuant to the statutes but purely contractual, ie, via the Special Agreement and [Singapore Domestic Agreement]. However, such contractual liability, in turn, arises based on the [Appellant's] liability to a Third Party pursuant to the provisions of the Road Transport Act of Singapore of which there are provisions specifically to cover passenger liability. Members are requested to take note that it is the view of both the Singapore and West Malaysia Bureaus that the Malaysian insurers who have contracted with MIB of Singapore and vice versa will have to meet their contractual obligations accordingly.* (Emphasis added.)

B(2). Proceedings in Singapore courts regarding the interpretation of the principal agreement, Singapore domestic agreement and special agreement

[13] In 2011, the respondent filed originating summons ('OS') No 808 of 2011 in the Singapore High Court against the appellant ('respondent's OS (Singapore)'). In the respondent's OS (Singapore), the respondent applied for a declaration that the respondent was not liable to satisfy a judgment obtained in a Singapore court by injured passengers and pillion riders in Singapore against the driver of a Malaysia-registered motor vehicle who had a motor vehicle insurance policy with the respondent.

[14] The appellant took out a 'mirror application' in the Singapore High Court against the respondent in OS No 580 of 2012 for a declaration that the appellant was entitled to recover from the respondent any unsatisfied judgment obtained by passengers and pillion riders injured in Singapore against a Malaysian-registered motor vehicle who had a motor vehicle insurance policy with the respondent ('appellant's OS (Singapore)').

[15] Both the respondent's OS (Singapore) and appellant's OS (Singapore) were heard together before Quentin Loh J. The Singapore High Court dismissed the respondent's OS (Singapore) and allowed appellant's OS (Singapore) — please refer to *Pacific & Orient Insurance Co Bhd (formerly known as Pacific & Orient Insurance Co Sdn Bhd) v Motor Insurers' Bureau of Singapore* [2013] 1 SLR 341 ('Singapore High Court's judgment (respondent's liability in Singapore under the principal agreement, Singapore domestic agreement and special agreement)'). It was decided in the Singapore High Court's judgment (respondent's liability in Singapore under the principal agreement, Singapore domestic agreement and special agreement), among others:

(1) the true and proper construction of the principal agreement, Singapore domestic agreement and special agreement (the same agreements in this case) supports the appellant's contention;

(2) the Singapore High Court cannot accept the respondent's argument that the respondent is not an 'Insurer Concerned' under the Singapore domestic agreement;

(3) it does not matter that the respondent's Malaysian insurance policy does not cover passenger liability. The whole purpose and rationale for the scheme of motor insurance bureau is to assure compensation for a victim without effective insurance cover;

(4) the party liable to make such compensation is the 'Insurer Concerned', ie, the insurance company which issued the policy to the tortfeasor, is liable to satisfy the Singapore judgment obtained by the injured party; and

(5) the fact that the respondent has not signed the supplemental agreement, is immaterial.

[16] The respondent had appealed to the Court of Appeal of Singapore against the Singapore High Court's judgment (respondent's liability in Singapore under the principal agreement, Singapore domestic agreement and special agreement) but this appeal was dismissed with costs ('Singapore Court of Appeal's decision (respondent's liability in Singapore under the principal agreement, Singapore domestic agreement and special agreement)').

B(3). Suit in Singapore court for personal injuries suffered in Singapore due to the negligence of a motorcyclist insured by the respondent in Malaysia

[17] On or around 21 May 2018, a Malaysian citizen named Mr Subramaniam a/l Wingdesan ('Mr Subramaniam') commenced Suit No- 528/2018 in the Singapore High Court ('Suit 528 (Singapore)') for damages for personal injuries and other consequential losses against, among others, the rider of motorcycle No JNH 8592 ('motorcycle'), Mr Prem Kumar Venu ('Mr Prem').

[18] At or about 5.55pm, 27 July 2015, Mr Subramaniam was a pillion rider on the motorcycle (ridden by Mr Prem) which was involved in a road traffic accident along Tuas West Avenue 3 in Singapore ('accident'). At the time of the accident, the respondent had issued in Malaysia an insurance policy with regard to the motorcycle.

[19] On 15 February 2022, a final judgment in Suit 528 (Singapore) was entered by consent for Mr Subramaniam against Mr Prem ('Subramaniam's Singapore judgment'). According to Subramaniam's Singapore judgment, Mr Prem shall pay the following sums to Mr Subramaniam:

(1) general damages (inclusive of interest) at S$565,000;

(2) special damages (inclusive of interest) at S$250,000;

(3) costs of S$120,000; and

(4) disbursements of S$50,000.

B(4). Suit by the appellant in Singapore against the respondent to recover Subramaniam's judgment (Singapore)

[20] The appellant commenced an action, Originating Application No HC/OA 461/2022, in the Singapore High Court to enforce its rights under the special agreement and Singapore domestic agreement against the respondent ('OA 461 (Singapore)').

[21] The cause papers in OA 461 (Singapore) were served on the respondent's solicitors in Malaysia, Messrs Shearn Delamore & Co (who had

instructions from the respondent to accept service on behalf of the respondent). However, the respondent did not enter appearance in OA 461 (Singapore) and did not therefore defend the appellant's claim in OA 461 (Singapore).

[22] On 1 November 2022, the Singapore High Court entered judgment in favour of the appellant against the respondent ('appellant's Singapore judgment') for the following sums:

(1) the principal judgment sum of S$985,000;

(2) interest of 5.33%pa from 12 May 2022 to the date of the appellant's judgment (Singapore); and

(3) costs of S$10,000 and disbursements of S$3,147.58.

C. MOTOR INSURER'S BUREAU OF SINGAPORE V AM GENERAL INSURANCE BHD ('AM GENERAL INSURANCE'S CASE')

[23] In *AM General Insurance*'s case:

(1) AM General Insurance Bhd ('AM General Insurance') issued a policy for a motorcycle in Malaysia to Mr Liew Voon Fah ('Mr Liew'). Mr Liew's policy excluded AM General Insurance's liability for the pillion rider of Mr Liew's motorcycle;

(2) Mr Liew's motorcycle was involved in an accident in Singapore on 8 December 2007. Mr Liew's wife, Ms Koo Siew Tai ('Ms Koo'), was the pillion rider at the time of the accident and suffered injuries. Both Mr Liew and Ms Koo worked in Singapore at the material time;

(3) Ms Koo obtained a judgment in the Singapore High Court against Mr Liew for damages with regard to her personal injuries ('Koo's Singapore judgment');

(4) to enforce Koo's Singapore judgment, the appellant filed a suit in the Singapore High Court against AM General Insurance and obtained a judgment therein ('appellant's Singapore judgment (*AM General Insurance*)') — please refer to *Motor Insurers' Bureau of Singapore and another v Am General Insurance Bhd (Formerly Known As Kurnia Insurans (Malaysia) Bhd) (Liew Voon Fah, Third Party)* [2018] 4 SLR 882;

(5) the appellant's Singapore judgment (*AM General Insurance*) was registered in the Kuala Lumpur High Court but subsequently, the High Court set aside the registration of the appellant's Singapore judgment (*AM General Insurance*) on the ground that the enforcement of the appellant's Singapore judgment (*AM General Insurance*) was contrary to public policy in Malaysia under s 5(1)(a)(v) of the REJA — please refer to *Motor Insurers' Bureau of Singapore v AM General Insurance Bhd* [2020] 3

CLJ 581 ('High Court's judgment (*AM General Insurance*)');

(6) the Court of Appeal reversed the High Court's judgment (*AM General Insurance*) with costs ('Court of Appeal's decision (*AM General Insurance*)'). There is, however, no written judgment in respect of the Court of Appeal's decision (*AM General Insurance*); and

(7) AM General Insurance applied for leave of the Federal Court to appeal to the Federal Court against the Court of Appeal's decision (*AM General Insurance*) but this application was dismissed with costs ('Federal Court's decision (*AM General Insurance*)').

D. PROCEEDINGS IN THE HIGH COURT

[24] On 23 February 2023, the appellant obtained an ex parte order in the High Court to register the appellant's judgment (Singapore) under s 4(1) of the REJA ('registration (appellant's Singapore judgment)').

[25] The respondent applied to the High Court to set aside the registration (appellant's Singapore judgment) ('respondent's setting aside application').

[26] On 23 November 2023, the High Court allowed the respondent's setting aside application with costs on the sole ground that the enforcement of the appellant's judgment (Singapore) would be contrary to public policy in Malaysia under s 5(1)(a)(v) of the REJA ('High Court's decision'). The High Court's written judgment gave the following grounds for the High Court's decision:

(1) the registration (appellant's Singapore judgment) under the REJA amounted to a backdoor imposition of Singapore law (regarding mandatory passenger insurance coverage) in Malaysia. Our Road Transport Act 1987 ('the RTA') does not mandatorily require users and owners of motor vehicles in Malaysia ('Malaysian motor vehicle owners/users') to obtain insurance coverage for passengers of motor vehicles ('insurance coverage (motor vehicle passengers)');

(2) the registration (appellant's Singapore judgment) would 'violate' the freedom of choice of Malaysian motor vehicle owners/users to buy insurance coverage (motor vehicle passengers) or otherwise. Such a consequence had the potential to limit the travel of motor vehicles registered in Malaysia to Singapore;

(3) the registration (appellant's Singapore judgment) would rewrite motor insurance policies in Malaysia. This is because with the registration (appellant's Singapore judgment), Malaysian insurers would have to satisfy claims by passengers of motor vehicles who suffered injuries in Singapore due to accidents even though the policies of Malaysian motor

vehicle owners/users do not provide for insurance coverage (motor vehicle passengers);

(4) the registration (appellant's Singapore judgment) would increase the financial burden of Malaysian motor vehicle owners/users who have to obtain insurance coverage (motor vehicle passengers). Consequently, the general Malaysian public would have to pay higher insurance premium;

(5) the doctrine of privity of contract would be undermined by the registration (appellant's Singapore judgment);

(6) the respondent did not sign the supplemental agreement. This was understandable as the respondent did not carry out any insurance business in Singapore;

(7) the 'regime' for MIBWM in West Malaysia is different from the appellant's 'regime' in Singapore. Hence, with regard to the registration (appellant's Singapore judgment), the respondent was not liable to the appellant under the principal agreement, Singapore domestic agreement and special agreement;

(8) PIAM's 1994 Circular is irrelevant because PIAM's 1994 Circular does not discuss the issue of whether the enforcement of the appellant's judgment (Singapore) would be contrary to public policy in Malaysia. Furthermore, PIAM does not regulate the motor insurance industry in Malaysia. Bank Negara Malaysia is the regulator of the insurance industry in this country and has not issued any circular which is similar to PIAM's 1994 Circular;

(9) the appellant's Singapore judgment did not concern the court's power to set aside the registration of a foreign judgment due to public policy. Hence, the respondent was not barred by the doctrine of res judicata and issue estoppel principle from setting aside the registration of the appellant's Singapore judgment; and

(10) as there was no written judgment with regard to the Court of Appeal's decision (*AM General Insurance*), the Court of Appeal's decision (*AM General Insurance*):

(a) did not bind the learned High Court judge; and

(b) did not bar the respondent from setting aside the registration, (appellant's Singapore judgment).

E. CONTENTIONS OF THE PARTIES IN THIS APPEAL (THIS APPEAL)

[27] In support of this appeal, the appellant's learned counsel had advanced the following submission, among others:

(1) the court can only set aside the registration (appellant's Singapore judgment) on the ground that the enforcement of the appellant's Singapore judgment is contrary to public policy in Malaysia if the respondent can show that such an enforcement:

(a) 'at least violate some fundamental principle of justice, some prevalent conception of good morals, or some deep-rooted tradition of the forum'; or

(b) would 'shock the conscience' of the court and is 'clearly injurious to the public good, or wholly offensive to the ordinary reasonable and fully informed member of the public'.

(2) the learned High Court judge should have taken into account the following relevant considerations in this case:

(a) Subramaniam's Singapore judgment was based on the accident which happened in Singapore;

(b) RTA has no extra-territorial effect outside Malaysia;

(c) the respondent had agreed to be bound by the principal agreement, Singapore domestic agreement and special agreement. Consequently, the respondent should be contractually liable for Subramaniam's Singapore judgment; and

(d) the special agreement is consistent with proviso (bb) to s 91(1)(b) of the RTA.

(3) the High Court erred in this case by taking into account the following irrelevant considerations:

(a) the registration (appellant's Singapore judgment) under the REJA was a backdoor imposition of Singapore law (regarding mandatory passenger insurance coverage) in Malaysia;

(b) the registration (appellant's Singapore judgment) would raise motor insurance premiums in Malaysia;

(c) the registration (appellant's Singapore judgment) would undermine the doctrine of privity of contract; and

(d) the respondent did not sign the supplemental agreement.

(4) no evidence had been adduced by the respondent to show that due to the registration (appellant's Singapore judgment):

(a) there would be limited travel of Malaysian registered vehicles to Singapore;

(b) Malaysian motor insurers would be forced to reconsider providing

insurance to the general public for vehicles traveling into Singapore;

(c) Malaysian motor insurers would raise insurance premiums for the general public to cover passenger risks; and

(d) owners of Malaysian motor vehicles 'can simply sit back and refrain from obtaining passenger cover'.

(5) the learned High Court judge's characterisation of 'public policy' in favour of the respondent, was merely a decision in favour of the respondent's sole economic interests; and

(6) the High Court should have decided that by reason of the res judicata doctrine and issue estoppel principle, the respondent was barred by the Singapore Court of Appeal's decision (respondent's liability in Singapore under the principal agreement, Singapore domestic agreement and special agreement) and Court of Appeal's decision (*AM General Insurance*) from setting aside the registration (appellant's Singapore judgment).

[28] According to the respondent's learned counsel, this appeal should be dismissed with costs on the following grounds, among others:

(1) the learned High Court judge had correctly exercised his discretion to allow the respondent's setting aside application. There is therefore no ground for appellate intervention in this appeal;

(2) public policy of Malaysia constitutes of the following matters:

(a) Malaysian law;

(b) the policy of the law;

(c) the policy in relation to the administration of the law;

(d) fundamental principles of substantive and procedural law and justice;

(e) Malaysian government policy;

(f) Malaysian moral values;

(g) whether the enforcement is clearly injurious to the public good;

(h) whether the enforcement is wholly offensive to the ordinary reasonable and fully informed member of the public; and

(i) all other relevant factors prevailing in Malaysia;

(3) save in the circumstances stated in proviso (aa), (bb) and (cc) to s 91(1)(b) RTA, the respondent is not liable to passengers or pillion riders of motor vehicles which have been insured by the respondent. In this regard, the

respondent's learned counsel had relied on:

(a) the following High Court judgments:

(i) the decision of Mohd Nazlan Ghazali J (as he then was) in *Liberty Insurance Bhd v Marrison ak Sidai & Anor* [2019] 12 MLJ 763; [2019] 8 CLJ 380; and

(ii) Ahmad Fairuz Zainol Abidin J's (as he then was) judgment in *Etiqa General Takaful Bhd v Thavamani a/p Krishnan & Ors* [2022] MLJU 3733; [2022] CLJU 3384.

(b) s 84(1) of the Financial Services Act 2013.

(4) in this case, Mr Subramaniam had decided not to pay for his pillion rider's insurance coverage. In such a circumstance, the respondent could not be liable to satisfy Subramaniam's Singapore judgment;

(5) when an insured person does not provide for insurance coverage for his/her passenger(s), it is solely up to the passenger(s) to assess the risk for accepting the ride in the insured's motor vehicle;

(6) the learned High Court judge had taken into account all relevant considerations in arriving at the High Court's decision;

(7) the special agreement is contrary to public policy of Malaysia; and

(8) the appellant has an alternative available to it, namely, the authorities in Singapore can require all Malaysian-registered motor vehicles to have insurance coverage (motor vehicle passengers). Such a requirement has been imposed by the Thai authorities on all Malaysian motor vehicle owners/users who wish to enter Thailand.

F. ISSUES

[29] This appeal raises the following questions:

(1) from the view point of the doctrine of stare decisis, was the High Court bound by:

(a) the Court of Appeal's decision (*AM General Insurance*); and/or

(b) the Federal Court's decision (*AM General Insurance*)?

(2) whether by reason of the Singapore Court of Appeal's decision (respondent's liability in Singapore under the principal agreement, Singapore domestic agreement and special agreement), the respondent was barred by the doctrine of res judicata (which includes cause of action estoppel and issue estoppel principle) from setting aside the registration (appellant's Singapore judgment);

(3) whether the High Court has a discretion under s 5(1)(a)(v) of the REJA

to set aside a judgment which has been registered by the High Court under s 4(1) of the REJA ('registered judgment') if the enforcement of the registered judgment would be contrary to public policy in Malaysia; and

(4) whether the enforcement of the registration (appellant's Singapore judgment) would be contrary to public policy of Malaysia.

OUR DECISION

G. WAS THE HIGH COURT BOUND BY THE COURT OF APPEAL'S DECISION (AM GENERAL INSURANCE) AND FEDERAL COURT'S DECISION (AM GENERAL INSURANCE)?

[30] We have no hesitation to decide that from the view point of the stare decisis doctrine, the High Court was not bound by:

(1) the Court of Appeal's decision (*AM General Insurance*); and

(2) the Federal Court's decision (*AM General Insurance*).
The above decision is premised on the ground that there was no written judgment given by the Court of Appeal and Federal Court in *AM General Insurance*'s case. We rely on the following two appellate decisions:

(a) in *Tetuan Wan Shahrizal, Hari & Co v Public Prosecutor* [2023] 4 MLJ 1, at [11] to [23], Abdul Rahman Sebli CJ (Sabah and Sarawak) has delivered a 2–1 majority judgment of the Federal Court as follows:

> [11] *With due respect to the learned judge, none of the grounds constitute valid reasons for allowing the claim. The Court of Appeal was absolutely correct in reversing the decision. First of all, the learned judge was wrong in holding in para 37 that he was bound by stare decisis to follow the decision of the Court of Appeal in Md Sukri bin Shahudin lain-lain lwn Pendakwa Raya Criminal Appeal No W-09–432–11 of 2016 (unreported) ('Md Sukri'), which allowed the claims by several law firms, among them the law firms of Messrs Isharidah Chong & Menon, Messrs Stanley Augustine & Co and Messrs Haresh Mahadevan & Co for their legal fees to be paid from the seized properties. As confirmed by the learned judge himself, no written grounds were delivered by the Court of Appeal in that case.*
>
> [12] *Without the benefit of the written grounds, there was no way that the learned judge could have known of the actual reason or reasons why the Court of Appeal decided the way it did in that case. In any case, it was wrong for him to have engaged in guesswork on the basis for the unwritten decision, which undoubtedly had weighed heavily in his mind in deciding whether or not to allow the appellant's claim.*
>
> [13] *What binds the lower courts under the stare decisis doctrine is the ratio decidendi of the case and not mere similarity in the facts or in the law, or in the arguments of counsel, nor the obiter dicta of the case.*

A

[14] *A lower court relying on an earlier unwritten decision of an appellate court must not assume that by affirming the decision of the lower court, the appellate court must have affirmed every finding of fact and law that the lower court had decided in favour of the winning party. Experience will tell that it is not uncommon for an appellate court to affirm or reverse the decisions of the lower courts on grounds other than those relied on by the lower courts*.

B

[15] *Nor must the court, in the absence of the written grounds, accept the argument that the appellate court in the earlier case decided the way it did because it accepted counsel's argument, even where the earlier case involved the same counsel. Such acceptance of counsel's argument must be reflected in the written grounds of judgment. The role of counsel is to assist and the court to decide*.

C

[16] *Ratio decidendi is Latin for 'the rationale for the decision'. The term refers to a key judicial point or chain of reasoning in a case that drives the final judgment. It is 'the principle or rule of law on which a court's decision is founded' (Black's Law Dictionary (11th Ed)) or 'the principle that the case establishes' (Barron's Law Dictionary (2nd Ed))*.

D

[17] *Obviously therefore, a decision that is delivered without the written grounds does not establish any principle or rule of law on which the decision is founded. The decision is therefore devoid of any ratio decidendi (rationale for the decision). It has no value as precedent. There may be instances where the court, either in its original or appellate jurisdiction, delivers a reasoned oral decision ex tempore but in that situation, the reasons must be reduced into writing in order for the decision to have any binding effect on the lower courts*.

E

[18] *We are not aware of any principle of law, nor have we been referred to any authority to say that the lower courts are bound by stare decisis even where the higher courts do not provide written grounds for their decisions. The following explanatory note on the doctrine, which can be found in Black's Law Dictionary, is relevant*:

F

The doctrine is simply that, when a point or principle of law has been once officially decided or settled by the ruling of a competent court in a case in which it is directly and necessarily involved, it will no longer be considered as open to examination, or to a new ruling by the same tribunal, or by those which are bound to follow its adjudications, unless it be for urgent reasons and in exceptional cases.

G

[19] *Thus, where there are no grounds written, there is no point or principle of law that can officially be decided or settled by the ruling of a competent court. The correct position of the law is that an unwritten decision of a higher court, whether sitting in its original or appellate jurisdiction, binds the parties to the action but is not authority for any principle or rule of law and does not bind the lower courts. This is where the learned judge in the present case fell into error when he said that he was bound by stare decisis to follow the unwritten decision of the Court of Appeal in Md Sukri*.

H

I

[20] *Presumably, the learned judge was not alerted to the decision of this court in Vishnu a/l Telagan v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2019] 6 MLJ 1; [2019] 9 CLJ 177 *where David Wong Dak Wah CJ (Sabah and Sarawak) delivering the unanimous decision of the court said*:

[40] *The respondents argued that the Federal Court there had heard a similar argument on this point and refused the detainee a writ of habeas corpus. As at the date of our decision in this appeal, no written grounds had been delivered in respect of that case and so we are therefore unable to glean any reasons why such a decision was made. Therefore we did not see how the said judgment lent any support to the respondent's case. Surely, in arriving at our decision, we had to consider and apply the law according to the facts and circumstances of this case*.

[21] The decision of this court referred to in the above passage is the unreported case of *Kamal Azam Borddin v Timbalan Menteri Dalam Negeri & Ors* Criminal Appeal No 05(HC)-133–05 of 2018(B) (unreported). In that case, a five member bench headed by Richard Malanjum CJ unanimously dismissed the appellant's appeal against the decision of the High Court dismissing his application for habeas corpus without giving any reason, written or otherwise, after hearing arguments by the parties.

[22] *In fact a similar decision was reached in an earlier decision of this court in Malaysian Motor Insurance Pool v Tirumeniyar a/l Singara Veloo* [2020] 1 MLJ 440; [2019] 10 CLJ 731. *This is what the court said at para 82*:

[82] *Without a written judgment the Federal Court's reasons for allowing the appeal as alluded to in the editorial note, is in our view purely speculative, and cannot be regarded as authoritative and/or binding. We would therefore disagree with the plaintiff that the Court of Appeal erred and 'was in breach of stare decisis' when it did not consider itself bound to follow Saw*.

[23] *Applying the above ratio to the present case, the learned judge would not have been in breach of stare decisis if he had chosen not to follow the decision of the Court of Appeal in Md Sukri. What was required of him was to consider and apply the law according to the facts and circumstances of the case before him (Vishnu a/l Telagan) instead of tying his own hands to the unwritten decision of the Court of Appeal*. (Emphasis added.)

(b) the above majority judgment of the Federal Court in *Tetuan Wan Shahrizal, Hari & Co* has been followed by the Court of Appeal in *Mohamed Fayadh bin Abdul Gaffor & Ors v Liberty Insurance Bhd (formerly known as Uni Asia General Insurance Bhd)* [2024] 6 MLJ 519, at [19(1)].

H. WAS THE RESPONDENT ESTOPPED BY THE SINGAPORE COURT OF APPEAL'S DECISION (RESPONDENT'S LIABILITY IN SINGAPORE UNDER THE PRINCIPAL AGREEMENT, SINGAPORE DOMESTIC AGREEMENT AND SPECIAL AGREEMENT) FROM APPLYING TO SET ASIDE THE REGISTRATION (APPELLANT'S SINGAPORE JUDGMENT)?

[31] Once a court has finally decided a case ('first case'), the decision in the first case *may* affect subsequent cases by way of an application of the doctrine of res judicata. In the Supreme Court case of *Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd* [1995] 3 MLJ 189, at pp 197 to 198, 198 and 199 to 200, Peh Swee Chin FCJ has explained that the res judicata doctrine consists of two limbs as follows:

(1) the principle of cause of action estoppel applies to bar a party ('X') in the first case and/or X's 'privy' from filing any action after the first case ('subsequent case') based on a cause of action which has been decided in the first case ('first limb (cause of action estoppel)'); and

(2) the issue estoppel principle operates to prevent X and/or X's privy from raising any *issue* in the subsequent case which:

(a) has been raised in the first case; or

(b) can be raised with reasonable diligence in the first case,

('second limb (issue estoppel)').

[32] We reproduce below s 5(1) of the REJA:

s 5 *Cases in which registered judgments must, or may, be set aside*

(1) *On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment —*

(a) *shall be set aside if the registering court is satisfied —*

(i) that the judgment is not a judgment to which this Part applies or was registered in contravention of [REJA];

(ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case;

(iii) that the judgment debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear;

(iv) that the judgment was obtained by fraud;

(v) *that the enforcement of the judgment would be contrary to public policy in Malaysia*; or

(vi) that the rights under the judgment are not vested in the person by whom the application for registration was made; and

(b) *may be set aside* if the registering court is satisfied that the matter in dispute in the proceedings in the original court had previously to the date of the judgment in the original court been the subject of a final and conclusive judgment by a court having jurisdiction in the matter. (Emphasis added.)

[33] It is clear that s 5(1)(a)(i) to (vi) and (b) of the REJA confers a statutory right on any party against whom a registered judgment may be enforced, to apply to court to set aside the registered judgment ('statutory right (to set aside registered judgment)'). The doctrine of res judicata is premised on case law and cannot be invoked to defeat the statutory right (to set aside registered judgment) which has been expressly conferred by Parliament. In this regard, we adopt the following judgment of the Court of Appeal in *Sabah Development Bank Bhd v TYL Land & Development Sdn Bhd* [2024] 6 MLJ 433, at [46(1)]:

[46] *With respect, the learned JC (judicial commissioner) committed an error of law in deciding that the Bank was estopped from denying the contents of the four PODs (proofs of debt) in this case (fourth legal error). The fourth legal error is as follows:*

(1) *the doctrine of equitable estoppel is premised on case law and cannot bar the effect of s 524(1)(a), (b) and (2) CA (Companies Act 2016) read with Paragraphs 13 and 15 (paras 13 and 15 of Schedule C to the Insolvency Act 1967). It is decided in the High Court case of Jambatan Merah Sdn Bhd v Public Bank Berhad* [2015] MLJU 1208; [2016] 1 CLJ 811, *at [78], as follows*:

[78] *In respect of the defendant's purported right to exercise remedy as a chargee under s 271(1)(a) NLC, it is trite law that there can be no application of the issue estoppel doctrine against the operation of a statutory provision (in this case, the application of s 270(1)(a) NLC). I cite the following cases*:

(a) *in Hotel Ambassador (M) Sdn Bhd v Seapower (M) Sdn Bhd* [1991] 1 MLJ 404, *at 407, Hashim Yeop Sani CJ (Malaya) held in the Supreme Court as follows*:

> *On the question of issue estoppel we agree with the learned judge that on the facts of this case the appellants cannot invoke the doctrine of issue estoppel. There can be no estoppel as against statutory provisions*.

(b) *Thomas CJ decided as follows in the Court of Appeal of the Federated Malay States in Puran Singh v Kehar Singh; Bhadur Singh* [1939] 1 MLJ 71, *at 75*:

> The main question argued at the appeal was that the learned trial Judge having held that the registration of Kehar Singh as proprietor of certain lands had been obtained by means of an insufficient or void instrument, viz., an invalid power of attorney, and that it was in consequence void under s 42 (iii) of the Land Code, he was wrong in holding that the plaintiff was estopped by his conduct from objecting to the registration. *In support of this contention he cited Borrow's case (1880) 14 ChD 432 in which it is stated by Bacon VC, in the course of his judgment that*:
>
> *the doctrine of estoppel cannot be applied to an Act of Parliament. Estoppel*

A *only applies to a contract inter partes and it is not competent to parties to a contract to estop themselves or anybody else in the face of an Act of Parliament.*

This view is followed in the case of Abdul Aziz v Kanthen Mallik 38 ILR Cal 512 515 in which at p 515 a long list of authorities has been set out. The court there decided that it was not prepared to accede to the argument that the principle of estoppel overrides the provisions of either s 78 of the Land Registration Act or s 60 of the Bengal Tenancy Act ...

B

So far as this is an argument on the question of estoppel it cannot in my opinion succeed, since it is only another way of saying that acts of the parties inter se can amount to an estoppel in respect of an Enactment.

C

(c) *in Re Salvage Engineers Ltd* [1962] 1 MLJ 438, *at 440, Ong J (as he then was) held in the High Court*:

There can be no estoppel against the operation of a statute ... (Emphasis added.)

D

In view of the respondent's statutory right (to set aside registered judgment), the High Court did not err in deciding that the appellant could not rely on the Singapore Court of Appeal's decision (respondent's liability in Singapore under the principal agreement, Singapore domestic agreement and special agreement) so as to raise the application of the res judicata doctrine, be it the first limb (cause of action estoppel) or the second limb (issue estoppel), against the respondent.

E

F **[34]** There is another reason why we cannot accept the invocation of the doctrine of res judicata based on the Singapore Court of Appeal's decision (respondent's liability in Singapore under the principal agreement, Singapore domestic agreement and special agreement). From the view point of the stare decisis doctrine, Malaysian courts are not bound in any manner by any judgment of a foreign court. In this regard, we adopt the following judgment Mary Lim Thiam Suan JCA (as she then was) in the Court of Appeal case of *Mann Holdings Pte Ltd & Anor v Ung Yoke Hong* [2019] MLJU 101, at [53]:

G

[53] *In any case, the decision of the Singapore Suit does not bind Malaysia because it does not form part of the doctrine of stare decisis in this country. However, insofar as the parties to the suit is concerned, once judgment is pronounced by any superior Court of competent jurisdiction, it binds the parties and forms the truth between the parties and their privies to the dispute.* (Emphasis added.)

H

I. THE TWO LIMBS OF S 5(1) OF THE REJA

I **[35]** We are of the view that s 5(1) of the REJA has the following two limbs:

(1) if there is proof of circumstances as stipulated in sub-paras (i) to (vi) of s 5(1)(a) of the REJA, the registered judgment 'shall be set aside' by the court ('first limb (s 5(1) of the REJA)'). With regard to the first limb

(s 5(1) of the REJA), the court has no discretion but must set aside the registered judgment; and

(2) if s 5(1)(b) of the REJA applies, the court has a discretion to decide on whether the registered judgment should be set aside or not ('second limb (s 5(1) of the REJA)').

The existence of the first limb (s 5(1) of the REJA) and second limb (s 5(1) of the REJA) is supported by the following reasons:

(a) our Legislature has employed the mandatory term 'shall' in the first limb (s 5(1) of the REJA) while a directory word 'may' is used in the second limb (s 5(1) of the REJA). The use of different terms in the first limb (s 5(1) of the REJA) and second limb (s 5(1) of the REJA) shows Parliament's intention to distinguish the effect of these two limbs of s 5(1) of the REJA; and

(b) the shoulder note of s 5 REJA ('shoulder note (s 5 of the REJA)') states that 'Cases in which registered judgments must, or may, be set aside'. The term 'must' in the shoulder note (s 5 of the REJA) refers to the first limb (s 5(1) of the REJA) while the word 'may' in the shoulder note (s 5 of the REJA) alludes to the second limb (s 5(1) of the REJA). Hence, the clear distinction between the first limb (s 5(1) of the REJA) and second limb (s 5(1) of the REJA). The court may refer to the shoulder note of a statutory provision — please refer to the judgment of Gopal Sri Ram JCA (as he then was) in the Federal Court case of *Lim Phin Khian v Kho Su Ming* [1996] 1 MLJ 1, at 28 to 29.

J. THE TWO BASES FOR THE REJA

[36] According to s 3(2) of the REJA:

> *The Yang di-Pertuan Agong may, if he is satisfied that in the event of the benefits conferred by this Part being extended to judgments given in the superior courts of any country or territory outside Malaysia, substantial reciprocity of treatment will be assured as respects the enforcement in that country or territory of judgments given in the High Court, by order extend this Part to that country or territory and may, by the same or a different order, amend the First Schedule to add that country or territory thereto and specify what courts of that country or territory shall be deemed to be superior courts for the purposes of this Part.* (Emphasis added.)

[37] In *Mann Holdings*, at paras [58] and [59], the Court of Appeal has explained the basis of the REJA as follows:

> [58] *Coming then to [REJA] itself and its operation. [REJA] is specific legislation enacted by Parliament to confer specific jurisdiction on the Courts to register judgments given by superior Courts of those reciprocating countries listed in the First Schedule to [REJA]. The whole basis of [REJA] starts with the concept or principle of comity and*

substantial reciprocity between nations. This is evident from the terms of s 3(2) which reads: …

[59] *Mohd Nazlan J has given a brief but helpful analysis of the history and background for [REJA] in Standard Chartered Bank (Singapore) Limited v Pioneer Smith (M) Sdn Bhd* [2015] MLJU 710; [2015] 7 CLJ 677. *According to His Lordship, [REJA] 'enshrines legal reciprocity which arguably has a stronger theoretical affinity with the concept of comity, and which is generally effective only to the extent that foreign judgments do not directly conflict with the other country's public policy (such as reflected in provisions contained in ss 3(3), 5(1)(a)(v) and 9(1) of the [REJA]. See Anthinarayana Mudaliar v Ajit Singh* [1953] 1 MLJ 229 *for an authority pre-legislation, but revealing that the principle is nevertheless the same, that it is one of comity and reciprocity*. (Emphasis added.)

It is clear from *Mann Holdings* that the two bases for REJA, as embodied in s 3(2) of the REJA, are international comity and reciprocity between Malaysia and a 'reciprocating country' ('defined in s 2 of the REJA as any country specified in the First Schedule to the REJA (reciprocating country)') with regard to any 'judgment' (defined widely in s 2 of the REJA) given by a court in the reciprocating country ('international comity/reciprocity (two bases of the REJA)').

[38] In view of the international comity/reciprocity (two bases of the REJA), Malaysian courts cannot question the merits and/or the basis of the judgment of the reciprocating country — please refer to the Court of Appeal's judgment in *Mann Holdings*, at [73].

K. THE SCOPE OF PUBLIC POLICY IN S 5(1)(a)(v) OF THE REJA

[39] We are of the following view regarding the application of public policy under s 5(1)(a)(v) of the REJA:

(1) our Court of Appeal has decided in *Mann Holdings*, at [72], as follows:

> *The concept of public policy is a narrow and restrictive doctrine; …* (Emphasis added.)

Premised on *Mann Holdings*, the court should take a restrictive approach in the application of public policy pursuant to s 5(1)(a)(v) of the REJA (restrictive approach). This restrictive approach is understandable because if otherwise, the international comity/reciprocity (two bases of the REJA) as embodied in s 3(2) of the REJA, will be undermined, if not rendered nugatory. It is to be borne in mind that by reason of the international comity/reciprocity (two bases of the REJA), the courts of reciprocating countries are similarly obliged to enforce judgments of Malaysian courts in the reciprocating countries.

Save in three exceptional circumstances, the Court of Appeal is bound by its own previous decisions — please refer to the Federal Court's judgment delivered by Peh Swee Chin FCJ in *Dalip Bhagwan Singh v Public*

Prosecutor [1998] 1 MLJ 1, at 12 to 13. Until the Federal Court overrules the restrictive approach as decided by the Court of Appeal in *Mann Holdings*, from the view point of the doctrine of stare decisis, both the Court of Appeal and High Court are bound by *Mann Holdings*;

(2) s 3(2)(f) of the Singapore's Reciprocal Enforcement of Commonwealth Judgments Act ('the RECJA (Singapore)') provides as follows:

> s 3 Restrictions on registration
>
> (2) *No judgment shall be ordered to be registered under this section if —*
>
> ...
>
> (f) *the judgment was in respect of a cause of action which for reasons of public policy* or for some other similar reason *could not have been entertained by the registering court*. (Emphasis added.)

Section 3(2) of the RECJA (Singapore) empowers the Singapore court not to register a judgment of a reciprocating country due to 'reasons of public policy'. In this regard, Singapore cases on public policy as a ground to refuse registration of judgments of reciprocating countries, are persuasive authorities.

In *Liao Eng Kiat v Burswood Nominees Ltd* [2004] SGCA 45, at [25] to [27], [32], [33] and [39] to [41], Yong Pung How CJ delivered the following judgment of the Court of Appeal of Singapore (its apex court):

> [25] *In our view, the crucial issue in the present case was whether registration of the Australian judgment was contrary to public policy considerations under s 3(2)(f) [RECJA]. Counsel for both parties were unable to point us to any local cases dealing specifically with this issue. It is thus appropriate to begin with the approach taken by foreign courts in some detail.*
>
> *The approach of foreign courts*
>
> [26] *Foreign courts have repeatedly emphasised that a high standard of public policy must be met before they will refuse to enforce a foreign judgment. The outcome of this approach has been that there are very few reported cases in which foreign judgments in personam have been denied enforcement or recognition for reasons of public policy, as noted by the English Court of Appeal in Soleimany v Soleimany* [1999] 3 All ER 847 at 855.
>
> [27] *Thus, the English courts have held that the doctrine of public policy*:
>
> > *should be invoked only in clear cases in which the harm to the public is substantially incontestable, and does not depend upon the idiosyncratic inferences of a few judicial minds* (*see Fender v Mildmay* [1937] 3 All ER 402 at 407.)
>
> *More significantly, the House of Lords accepted in Vervaeke v Smith* [1982] 2 All ER 144 at 157–158 that:
>
> > *[T]he court will be even slower to invoke public policy in the field of conflict of laws than when a purely municipal legal issue is involved. There is little*

authority for refusing, on the ground of public policy, to recognise an otherwise conclusive foreign judgment, no doubt because the conclusiveness of a judgment of a foreign court of competent jurisdiction is itself buttressed by the rule of public policy interest reipublicae ut sit finis litium, the 'commonwealth' in conflict of laws extending to the whole international community. Nevertheless, there is some judicial authority that the English court will in an appropriate case refuse on the ground of public policy to accord recognition to the judgment of a foreign court of competent jurisdiction … Although an English court will exercise such a jurisdiction with extreme reserve … the instant is a case where it should be invoked …

…

[32] *A survey of these cases made it apparent that there is a higher standard of public policy in operation when a forum court is faced with a foreign judgment, as opposed to a domestic issue being litigated for the first time in the forum court. Foreign courts appear very reluctant to invoke the expedient of 'public policy' to justify a refusal to recognise a foreign judgment, even if their domestic public policy would have precluded enforcement of the underlying claim.*

Arbitration cases

[33] *Counsel for Burswood drew our attention to several arbitration cases where the courts manifested the same reluctance to rely on public policy grounds to refuse recognition of foreign awards.*

…

[39] *We recognised that all four cases dealt with the enforcement of foreign arbitral awards. Nevertheless, we agreed with counsel for Burswood that the same public policy requirements that apply to the enforcement of international arbitral awards should apply to enforcement of foreign judgments under the RECJA. Both the New York Convention and the RECJA were enacted with the basic aim of removing pre-existing obstacles to the enforcement of foreign awards or judgments. A narrow reading of the public policy defence would help to further this aim. Above all, considerations of reciprocity that underlie both the New York Convention and the RECJA enjoin courts to invoke the public policy defence with caution.*

[40] *We pause here to iterate the point that the statutory regime in question is based on reciprocal treatment of the judgments of the High Court and the Court of Appeal of Singapore on the one hand and corresponding courts of other countries within the Commonwealth on the other. Specifically, the minister by gazette notification S 383/93 extended the application of the RECJA to judgments of the Supreme Court of Western Australia after being satisfied that reciprocal provisions had been made by the state legislature of Western Australia for the enforcement of judgments obtained in the High Court and the Court of Appeal of Singapore.*

[41] *For these reasons, we concurred with Burswood's submissions that public policy in the conflict of laws operates with less vigour than public policy in the domestic law. As such, we determined that Liao would have to surmount the higher public policy threshold in order to prevail upon us to refuse registration of*

the Australian judgment on grounds of public policy. (Emphasis added.)

In summary, *Liao Eng Kiat* decided as follows:

(a) a 'higher public policy threshold' has to be fulfilled before a court in Singapore and United Kingdom ('UK') refuses to register a judgment of a reciprocating country in Singapore and UK respectively; and

(b) public policy as a ground for the court to refuse registration of a foreign judgment, 'operates with less vigour than public policy in the domestic law'.

The 'higher public policy threshold' as applied in Singapore and UK (as explained in *Liao Eng Kiat*) is consistent with the restrictive approach as laid down in *Mann Holdings*;

(3) according to *Liao Eng Kiat*, the scope of application of public policy as a ground to set aside the registration of a foreign judgment, should be narrower than the scope of operation of public policy under domestic law. In Malaysia, s 24(e) of the Contracts Act 1950 ('the CA') and s 37(1)(b)(ii) of the Arbitration Act 2005 ('the AA') provide for the application of public policy with regard to contracts and arbitral awards respectively. Reproduced below are s 24(e) of the CA and s 37(1)(b)(ii) of the AA:

CA

s 24 *What considerations and objects are lawful, and what not*

The consideration or object of an agreement is lawful, unless —

...

(e) *the court regards it as immoral, or opposed to public policy*.

In each of the above cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

AA

s 37 *Application for Setting Aside*

(1) *An [arbitral award] may be set aside by the High Court only if —*

...

(b) *the High Court finds that —*

...

(ii) *the award is in conflict with the public policy of Malaysia*. (Emphasis added.)

We adopt the judgment in *Liao Eng Kiat* that the scope of application of public policy to set aside a registered judgment under s 5(1)(a)(v) of the REJA ('public policy (s 5(1)(a)(v) of the REJA)') should be narrower than

the scope of operation of public policy under Malaysian domestic law, eg, s 24(e) of the CA and s 37(1)(b)(ii) of the AA. This is because unlike the application of public policy in our municipal law, the narrow scope of public policy (s 5(1)(a)(v) of the REJA) is premised on the international comity/reciprocity (two bases of the REJA) as provided in s 3(2) of the REJA — please refer to the above para 37. Consequently, cases on the application of public policy under s 24(e) of the CA, s 37(1)(b)(ii) of the AA and any other written law of Malaysia, should not apply in the context of public policy (s 5(1)(a)(v) of the REJA).

In *PT Sandipala Arthaputra v Muehlbauer Technologies Sdn Bhd* [2021] MLJU 1063, at [56] to [58], the High Court relied on the judgment of Ramly Ali FCJ in the Federal Court case of *Jan De Nul (M) Sdn Bhd & Anor v Vincent Tan Chee Yioun & Anor* [2019] 2 MLJ 413 to decide an application to set aside a registered judgment pursuant to s 5(1)(a)(v) of the REJA. *Jan De Nul* concerned the application of public policy as a ground to set aside an arbitral award under s s 37(1)(b)(ii) of the AA. In view of our adoption of *Liao Eng Kiat*, this part of the High Court's judgment in *PT Sandipala Arthaputra*, should not apply as the scope for public policy (s 5(1)(a)(v) of the REJA) is narrower than the scope of operation of public policy under s 37(1)(b)(ii) of the AA;

(4) Abdul Hamid Mohamad J (as he then was) had explained the meaning of public policy (s 5(1)(a)(v) of the REJA) in the High Court case of *Banque Nasionale De Paris v Wuan Swee May & Anor* [2000] 3 MLJ 587; [2000] 4 CLJ 387, at 396 to 397, as follows:

> ... *However, I wish to stress that the public policy that should be considered is the public policy in Malaysia. That is what s 5(1)(a)(v) [REJA] says. Therefore Malaysian courts should not rely too much on decisions of courts in other countries. Adopting the principles is not objectionable, but it should be done with discretion, always bearing in mind the prevailing circumstances in this country. But to adopt a specific ruling that a particular matter is or is not against the public policy in one country at that particular point of time under the circumstances then prevailing in that country as a point of law applicable all the time in this country is, in my view, not advisable.*
>
> *The public policy in one country, even at the same point of time, may be different from that of another country. The public policy in the same country may be different at different times*. Even at the same point of time moral values in one country may different from that in another country. The stage of development (economic, education etc) of one country may be different from that of another. Political and social problems may be different. Culture and religion may be different. Attitude of the general public and the government towards religion may be different. One country's vision may be different from that of another country. *When foreign courts decide the issue of public policy before them they only consider the relevant circumstances in their respective countries. They certainly are not concerned with the circumstances in Malaysia, which may, most likely, be different. And when they decide that a matter is or is*

not against public policy, they actually decide it in the light of the public policy in their respective countries, not Malaysia.

So, when a Malaysian court is considering the issue of public policy in Malaysia, it should look at Malaysian law, Malaysian government policy, Malaysian moral values and all other relevant factors then prevailing in Malaysia, including what I have mentioned earlier. I know that some people may not feel comfortable with the use of the words 'government policy'. In my view, it is a relevant factor. I am also of the view that it is wrong to 'marginalise' government policies in considering what is the public policy in Malaysia. Who can better claim to represent the public than a democratically elected government? Who is more responsible for the welfare of the people and the country than the government of that country? Who is more responsible for the law and order, economy, education and indeed everything affecting the people and the country, than the government of that country?

'Public policy' for the purpose of s 5(1)(a)(v) of REJA is in my view, wider than 'illegally'. But I will not attempt to define it. I do not think it can be defined. (Emphasis added.)

(5) the legal and evidential burden to satisfy the court on a balance of probabilities to set aside a registered judgment based on public policy (s 5(1)(a)(v) of the REJA) ('legal/evidential burden'), is on the party who applies to set aside the registered judgment ('Y') and not on the party who is enforcing the registered judgment;

(6) to discharge the legal/evidential burden, Y has to identify specific aspect(s) of public policy (s 5(1)(a)(v) of the REJA) (to which the registered judgment would be contrary). It may not be sufficient for Y to discharge the legal/evidential burden by making a general reference to public policy (s 5(1)(a)(v) of the REJA); and

(7) if Y is able to prove that the enforcement of the registered judgment would be contrary to specific aspect(s) of public policy (s 5(1)(a)(v) of the REJA), the court has no discretion and 'shall' set aside the registered judgment pursuant to the first limb (s 5(1) of the REJA) — please refer to the above sub-para 35(1).

L. WHETHER THE ENFORCEMENT OF THE REGISTRATION (APPELLANT'S SINGAPORE JUDGMENT) WOULD BE CONTRARY TO PUBLIC POLICY (S 5(1)(a)(v) OF THE REJA)

L(1). What was the nature of the appellant's Singapore judgment?

[40] It is clear to us that the appellant's Singapore judgment:

(1) was purely a monetary judgment based on the respondent's contractual liability to the appellant under the special agreement and Singapore domestic agreement; and

(2) was based on Subramaniam's Singapore judgment. It is to be noted that:

(a) Mr Subramaniam is a Malaysian citizen who had suffered personal injuries due to the accident caused by the motorcycle ridden by Mr Prem in Singapore; and

(b) the respondent's insurance policy issued in Malaysia for Mr Prem's motorcycle did not have insurance coverage for pillion rider(s), including Mr Subramaniam,

('nature (appellant's Singapore judgment)').

L(2). Did the High Court commit any legal error in this case?

[41] Firstly, the learned High Court judge committed an error of law in this case ('first legal error') when he did not apply the restrictive approach as laid down by the Court of Appeal in *Mann Holdings* (please refer to the above sub-para 39(1)). As a matter of stare decisis, with regard to the restrictive approach, the High Court is bound by the Court of Appeal's judgment in *Mann Holdings*.

[42] Secondly, in this case the High Court applied the Federal Court case of *Jan De Nul* (regarding the application of public policy to set aside an arbitral award pursuant to s 37(1)(b)(ii) of the AA). As decided in *Liao Eng Kiat* and adopted by us in this appeal, public policy (s 5(1)(a)(v) of the REJA) should be narrower than the scope of operation of public policy under Malaysian domestic law — please refer to the above sub-para 39(3). As such, a second error of law was committed by the High Court by relying on *Jan De Nul* ('second legal error').

[43] Thirdly, the learned High Court judge did not address in his written judgment that the respondent (not the appellant) had the legal/evidential burden to prove that the registration (appellant's Singapore judgment) would be contrary to public policy (s 5(1)(a)(v) of the REJA) ('third legal error'). If the respondent could not discharge the legal/evidential burden, the respondent's Application should be dismissed on this ground alone.

L(3). Whether the registration (appellant's Singapore judgment) would be contrary to the public policy embodied in the RTA

[44] We reproduce below the relevant parts of ss 89, 90 and 91 of the RTA:

s 89 *Interpretation*

In this Part [Part IV RTA], unless the context otherwise requires —

...

'Motor Insurers' Bureau' means the Motor Insurers' Bureau which has executed an agreement with the Minister of Transport to secure compensation to third party victims of road accidents in cases where such victims are denied compensation by the absence of insurance or of effective insurance;

...

s 90 *Motor vehicle users to be insured against third party risks*

(1) *Subject to this Part, it shall not be lawful for any person to use or to cause or permit any other person to use, a motor vehicle unless there is in force in relation to the user of the motor vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third party risks as complies with the requirements of this Part.*

(2) If a person acts in contravention of this section he shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding three months or to both and a person convicted of an offence under this section shall, unless the court for special reasons to be specified in the order thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified from holding or obtaining a driving licence under Part II for a period of twelve months from the date of the conviction.

...

s 91 *Requirements in respect of policies*

(1) *In order to comply with the requirements of this Part, a policy of insurance must be a policy which —*

(a) is issued by a person who is an authorized insurer within the meaning of this Part; and

(b) *insures such person, or class of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the motor vehicle or land implement drawn thereby on a road*:
Provided that such policy shall not be required to cover —
(aa) liability in respect of the death arising out of and in the course of his employment of a person in the employment of a person insured by the policy or of bodily injury sustained by such a person arising out of and in the course of his employment; or
(bb) *except in the case of a motor vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, liability in respect of the death of or bodily injury to persons being carried in or upon or entering or getting onto or alighting from the motor vehicle at the time of the occurrence of the event out of which the claims arise; or (cc) any contractual liability.* (Emphasis added.)

[45] Firstly, there is nothing in the RTA, either expressly or by necessary implication, which prohibits the enforcement of the appellant's Singapore judgment in this country.

[46] Secondly, RTA is a 'social legislation' — please refer to the Court of Appeal's judgment in *Mohamed Fayadh*, at [23(1)]. Accordingly, RTA should be interpreted in a socially benevolent manner in favour of, among others, victims of accidents involving motor vehicles who have no recourse against negligent owners and users of motor vehicles as well as their insurers ('social legislation construction (RTA)').

[47] In view of the nature (appellant's Singapore judgment) as stated in the above para 40, a social legislation construction (RTA) does not support the respondent's contention that the enforcement of the appellant's Singapore judgment is contrary to public policy (s 5(1)(a)(v) of the REJA). On the contrary, a social legislation construction (RTA) supports the enforcement of the appellant's Singapore judgment in Malaysia under the REJA, especially when we consider the fact that the appellant is a non-profit organisation in Singapore to ensure that, among others, victims of road traffic accidents have recourse when there is no insurance coverage for the victims (similar to the objectives and functions of MIBWM as provided in the definition in s 89 of the RTA). The learned High Court judge had erred in law by not considering the social legislation construction (RTA), nature (appellant's Singapore judgment) and appellant's non-profit function ('fourth legal error').

[48] For the sake of completeness, we wish to add that there is nothing in RTA, including ss 90(1), 91(1)(b) and proviso (bb) to s 91(1)(b) of the RTA, which evinces any public policy (s 5(1)(a)(v) of the REJA) for the court to set aside the registration (appellant's Singapore judgment).

L(4). Did the High Court consider matters which did not constitute public policy (s 5(1)(a)(v) of the REJA)?

[49] The learned High Court judge decided that the registration (appellant's Singapore judgment) under REJA was tantamount to a backdoor imposition of Singapore law (which requires mandatory insurance coverage (motor vehicle passengers)) in Malaysia (our RTA does not require Malaysian motor vehicle owners/users to obtain insurance coverage (motor vehicle passengers)). With respect, the registration (appellant's Singapore judgment) only concerned the enforcement of the appellant's Singapore judgment in Malaysia against the respondent. There is no enforcement of Singapore law regarding mandatory insurance coverage (motor vehicle passengers) in Malaysia by way of the registration (appellant's Singapore judgment).

Furthermore, a judgment of a reciprocating country inevitably concerns an application of the law of the reciprocating country ('law (reciprocating country)'). If we have accepted the above ground of the High Court's decision, this will lead to an unjust and undesirable outcome, namely, every time a judgment of a reciprocating country is registered under the REJA, there will be a backdoor introduction of the law (reciprocating country) in Malaysia and on this ground alone, the registration of the foreign judgment under the REJA must be set aside. Such an outcome is clearly contrary to the restrictive approach and nullifies the international comity/reciprocity (two bases of the REJA).

[50] According to the High Court, the registration (appellant's Singapore judgment) would 'violate' the freedom of choice of Malaysian motor vehicle owners/users to obtain insurance coverage (motor vehicle passengers) or not ('contractual freedom (Malaysian motor vehicle owners/users)').

We fail to see how the contractual freedom (Malaysian motor vehicle owners/users) is adversely affected by the registration (appellant's Singapore judgment). This is because, with or without the registration (appellant's Singapore judgment), Malaysian motor vehicle (owners/users) still possess the contractual freedom (Malaysian motor vehicle owners/users). Even if the contractual freedom (Malaysian motor vehicle owners/users) is curtailed by the registration (appellant's Singapore judgment), we are not persuaded that such a curtailment, in itself, amounts to a specific aspect of public policy (s 5(1)(a)(v) of the REJA) which can justify the setting aside of the registration (appellant's Singapore judgment).

[51] The learned High Court judge held that by reason of the registration (appellant's Singapore judgment), motor vehicle insurance companies would have to rewrite motor insurance policies in Malaysia because with the registration (appellant's Singapore judgment), Malaysian insurers would have to satisfy claims by passengers of motor vehicles who suffered injuries in Singapore due to accidents (even though the policies of Malaysian motor vehicle owners/users do not provide for insurance coverage (motor vehicle passengers)). Firstly, we do not agree that the registration (appellant's Singapore judgment) would cause motor insurance companies to rewrite motor insurance policies. At the risk of repetition, the registration (appellant's Singapore judgment) only concerned the enforcement of the appellant's Singapore judgment in Malaysia against the respondent. In any event, even if it is assumed that motor insurance companies have to rewrite motor insurance policies due to the registration (appellant's Singapore judgment), such an event, in itself, does not constitute a specific aspect of public policy (s 5(1)(a)(v) of the REJA) for the High Court to allow the respondent's setting aside application. This is because the financial 'burden' on motor insurance companies to rewrite motor

insurance policies is not equivalent to a specific aspect of public policy of this country to set aside the registration (appellant's Singapore judgment).

[52] The learned High Court judge decided that the registration (appellant's Singapore judgment) would increase the financial burden of Malaysian motor vehicle owners/users who have to obtain insurance coverage (motor vehicle passengers). Consequently, according to the High Court, the general Malaysian public would have to pay higher insurance premiums for the insurance coverage (motor vehicle passengers). Firstly, the respondent had not adduced any evidence to show that the registration (appellant's Singapore judgment) would increase insurance premiums to be paid by Malaysian motor vehicle owners/users. More importantly, even if there is an increase in the payment of insurance premiums by Malaysian motor vehicle owners/users, such a fact, in itself, does not constitute a specific aspect of public policy (s 5(1)(a)(v) of the REJA) for the court to to set aside the registration (appellant's Singapore judgment).

[53] According to the High Court, the doctrine of privity of contract would be undermined by the registration (appellant's Singapore judgment). We are of the view that the mere fact that a legal doctrine is undermined or is not followed in a particular case, does not mean that public policy is involved in that case. If otherwise, every time a legal doctrine is undermined or is not followed in a case, the court may then resort to public policy!

[54] The learned High Court judge alluded to the fact that the respondent did not sign the supplemental agreement. Such a fact does not raise a specific aspect of public policy (s 5(1)(a)(v) of the REJA) because such a fact concerned the respondent only.

[55] The High Court held that the 'regime' for MIBWM in West Malaysia is different from the appellant's 'regime' in Singapore. This case does not concern MIBWM. Hence, any comparison between the appellant and MIBWM, was of no consequence in this case.

[56] According to the learned High Court judge, PIAM's 1994 Circular is irrelevant because PIAM's 1994 Circular does not discuss the issue of whether the enforcement of the appellant's judgment (Singapore) would be contrary to public policy in Malaysia. We are unable to agree because para 5 of PIAM's 1994 Circular clearly stated that it was the 'view of both the Singapore and West Malaysia Bureaus that the Malaysian insurers who have contracted with MIB of Singapore and vice versa will have to meet their contractual obligations accordingly'. It is therefore clear that para 5 of PIAM's 1994 Circular supports the enforcement of the registration (appellant's Singapore judgment) in Malaysia. As such, the High Court should have decided that based on para 5 of

PIAM's 1994 Circular, the enforcement of the registration (appellant's Singapore judgment) would not be contrary to public policy (s 5(1)(a)(v) of the REJA).

M. CONTENTIONS OF THE RESPONDENT'S LEARNED COUNSEL

[57] With regard to the following submission by the respondent's learned counsel:

(1) the respondent is not liable to passengers or pillion riders of motor vehicles which have been insured by the respondent because the policies in question do not have insurance coverage (motor vehicle passengers);

(2) in this case, Mr Subramaniam had decided not to pay for his pillion rider's insurance coverage. Hence, the respondent could not be liable to satisfy Subramaniam's Singapore judgment and appellant's Singapore judgment;

(3) when an insured person does not provide for insurance coverage for his or her passenger(s), it is solely up to the passenger(s) to assess the risk for accepting the ride in the insured's motor vehicle;

(4) the special agreement is contrary to public policy of Malaysia; and

(5) the appellant has an alternative available to it, namely, the authorities in Singapore, can require all Malaysian-registered motor vehicles to have insurance coverage (motor vehicle passengers) before their entry into Singapore (as in Thailand),

– we have no hesitation to decide that the above contentions do not constitute specific aspects of public policy (s 5(1)(a)(v) of the REJA) which can set aside the registration (appellant's Singapore judgment). To accede to the above submission is contrary to the restrictive approach and renders illusory the international comity/reciprocity (two bases of the REJA).

N. CONCLUSION

[58] We are not persuaded that in this case, the respondent had discharged the legal/evidential burden to prove that the registration (appellant's Singapore judgment) would be contrary to public policy (s 5(1)(a)(v) of the REJA).

[59] In view of:

(1) the first to fourth legal errors; and

(2) the reasons expressed in the above Parts L(3), L(4), M and para 58 — we are constrained to allow this appeal with the following order:

(a) the High Court's decision is set aside;

A

(b) the registration (appellant's Singapore judgment) is restored; and

(c) the respondent shall pay to the appellant costs in a sum of RM25,000 for the proceedings in the Court of Appeal and High Court (subject to allocatur fee).

B

Appeal allowed; High Court's decission set aside; and Singapore judgment registration restored.

Reported by Ashok Kumar

C

D

E

F

G

H

I